

# ANALYSIS OF AMENDED BILL

## Franchise Tax Board

Author: Goldberg Analyst: Gloria McConnell Bill Number: AB 891  
Related Bills: See Legislative History Telephone: 845-4336 Amended Date: 09/07/01  
Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Child Support Enforcement/FTB May Not Be Referred Child Support Delinquencies of Certain Disabled Obligor

### SUMMARY

This bill would preclude the Franchise Tax Board (FTB) from collecting delinquent child support in cases where the noncustodial parent<sup>1</sup> is disabled and receiving monthly benefits from either Supplemental Security Income/State Supplementary Payments (SSI/SSP) or Social Security Disability Insurance (SSDI).

### SUMMARY OF AMENDMENTS

The September 7, 2001, amendments preclude rather than prohibit FTB from collecting on the above-described cases and add provisions that do not affect FTB.

The July 17, 2001, amendments are technical.

The April 23, 2001, amendments deleted the provisions of the bill as introduced, which did not affect FTB, and added provisions that would have prohibited FTB from collecting on the above-described cases.

This is the department's first analysis of this bill.

### PURPOSE OF THE BILL

According to the author's staff, the purpose of this bill was to protect a disabled obligor's SSI/SSP and certain amounts of an obligor's Social Security Disability Income (SSDI) from being used to pay child support.

### EFFECTIVE/OPERATIVE DATE

This bill would be effective and operative on January 1, 2002.

### POSITION

Pending.

<sup>1</sup> Under state law, a noncustodial parent who owes child support is commonly referred to as an "obligor," which is herein used in this analysis.

Board Position:

_____ S	_____ NA	_____ NP
_____ SA	_____ O	_____ NAR
_____ N	_____ OUA	_____ X PENDING

Department Director

Date

Brian Toman for Gerald H. Goldberg 9/21/01

## ANALYSIS

### FEDERAL/STATE LAW

Certain individuals, who may include obligors, may have no or very limited sources of income, and therefore, receive federal and state aid through SSI/SSP benefits. If an individual otherwise would qualify for SSI/SSP and is disabled, the individual may receive SSDI benefits, which is a higher monthly income amount than SSI/SSP. Under federal law, SSI/SSP benefits expressly cannot be used for child support collection purposes (current or delinquent child support); however, SSDI benefits are subject to collections. For SSDI, states, however, have limited collection discretion. Generally, under California laws and guidelines, SSDI benefits are collectible for child support purposes in the same manner as any other type of income.

FTB collects delinquent child support when the case is referred to FTB by local child support agencies, including cases where the obligors receive SSI/SSP or SSDI benefits. To collect the delinquent child support, FTB typically levies an obligor's property by mailing Orders to Withhold (OTWs) to the person holding that property. Therefore, in cases where obligors have deposit accounts in financial institutions, FTB mails an OTW to that financial institution. The OTW directs the financial institution to withhold from the obligors' deposit accounts an amount equal to the delinquent child support.

During the time that FTB has the case for collection, FTB may receive information from obligors that the deposits in their financial institution account are from SSI/SSP benefits. In this situation, FTB would not issue an OTW to that financial institution, because collection from this income source is prohibited. On the other hand, if under the same circumstances the source of deposits were SSDI benefits, FTB would refrain from collection only if the obligor's financial circumstances so warrant. If FTB unknowingly levies a deposit account containing SSI/SSP or SSDI benefits, staff can take several actions depending upon when the obligor notifies FTB of the income/deposit source:

Circumstances –If the obligor notifies FTB:	SSI/SSP	SSDI
Before the financial institution has actually transmitted the amounts to FTB	FTB would Release OTW	FTB would generally release OTW
Between the time the financial institution has transmitted the levied amounts to FTB, and FTB has transferred the levied amounts to the county agency	FTB would return the levied amounts	FTB would generally return the levied amounts
FTB has already transferred the levied amounts to the county agency	FTB would instruct the obligor to contact the county to resolve the matter	FTB would instruct the obligor to contact the county to resolve the matter

### THIS BILL

Under this bill, in cases where obligors are disabled and would otherwise qualify for SSI/SSP, the local child support agency would not refer these cases to FTB for collection. If (mistakenly) referred, the local child support agency would recall the case. In this situation, FTB would cease any collection actions.

### IMPLEMENTATION CONSIDERATION

This bill could be implemented by FTB without significant difficulties.

### **LEGISLATIVE HISTORY**

AB 3589 (Speier; Stats. 1992; Ch. 1223) created FTB's delinquent child support collection program. Under this program, counties (local child support agencies) refer child support delinquencies to FTB for collection as though they were delinquent income tax debts.

### **OTHER STATES' INFORMATION**

Staff telephoned the child support enforcement offices of the following six larger states regarding their law and practice for levying on SSDI: *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. Each of these states provides no special collection treatment for SSDI payments. In these states, as under current California law, SSDI is subject to collection for child support purposes as though it were any other collectible income source.

### **FISCAL IMPACT**

#### Departmental Costs

This bill would not affect FTB's departmental costs.

### **ECONOMIC IMPACT**

#### Collection Estimate

The impact on the collection of child support delinquencies is unknown. Staff cannot determine the total number of obligors who would be affected by this bill and the total amount of money that would be otherwise be subject to collection except for this bill.

### **LEGISLATIVE STAFF CONTACT**

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